

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 Robert Wiesen,

4  
5 Petitioner,

6 v.

7  
8 Whatcom County,

9  
10 Respondent.

Case No. 06-2-0008

**ORDER GRANTING MOTION TO  
DISMISS**

11  
12 **I. Synopsis of Decision**

13 THIS Matter comes before the Board upon dispositive motions. Motions were filed by  
14 Petitioner – Petitioner’s Motion for Summary Judgment and Supporting Memorandum, June  
15 13, 2006 – and Whatcom County – Respondent’s Dispositive Motion, June 13, 2006. Both  
16 sides agree that this case can be decided on motions because the only question to be  
17 decided is whether Whatcom County has failed to timely to review its designated urban  
18 growth areas under either the requirements of RCW 36.70A.130(3) or the County’s own  
19 planning enactments. We find that the ten year period established for review of urban  
20 growth areas in RCW 36.70A.130(3) runs from the date of actual adoption of those urban  
21 growth area designations. We also find that the County’s planning documents do not create  
22 an enforceable obligation to conduct the RCW 36.70A.130(3) review at an earlier time than  
23 is set by that statutory provision. The County has initiated its review of the Bellingham UGA  
24 and is working with the City of Bellingham, but this review is not completed. For these  
25 reasons, we dismiss the petition for review in this case as premature.  
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29 **II. Procedural Background**

30 The petition for review in this case was filed on April 19, 2006. At the same time, Petitioner  
31 filed a petition for review in *Wiesen v. City of Bellingham*, WWGMHB Case No. 06-2-0009.  
32 At a prehearing conference held May 16, 2006, the two cases were coordinated for hearing.  
All parties agreed that the issues in these cases could be resolved on motions.

1 On June 12, 2006, Whatcom County filed Respondent's Dispositive Motion. On June 13,  
2 2006, Petitioner filed a Motion for Summary Judgment. Petitioner's Motion for Summary  
3 Judgment and Supporting Memorandum. The County filed its response to Petitioner's  
4 motion on June 26, 2006. Respondent's Response to Petitioner's Motion for Summary  
5 Judgment. Petitioner then filed his response to the County's motion on June 27, 2006.  
6 Petitioner's Response to Respondent Whatcom County's Dispositive Motion.  
7

8  
9 The City of Bellingham filed a motion to dismiss in the *Wiesen v. City of Bellingham*,  
10 WWGMHB Case No. 06-2-0009 on June 13, 2006. On July 5, 2006, Petitioner notified the  
11 Board that he concurred in the dismissal of the Bellingham case. On July 7, 2006, the  
12 Board advised the parties to this case that, unless it received an objection, we would decide  
13 the instant case on the briefs submitted. There was no objection filed with the Board. The  
14 Board finds that the arguments were thoroughly presented through the briefs and therefore  
15 oral argument was not necessary.  
16

### 17 18 **III. Issues Presented in Petition for Review**

- 19 1. Did the County violate RCW 36.70A.130(3), 36.07A.110, 36.70A.020(1) and (2),  
20 36.70A.040, 36.70A.070, and 36.70A.140 by failing to perform the review of its urban  
21 growth areas (UGAs) and the densities permitted within both the incorporated and  
22 unincorporated portions of each UGA, as required under RCW 36.70A.130(3), within the  
23 timeframe established in the statute?
- 24 2. Did the County violate RCW 36.70A.130(3), 36.07A.110, 36.70A.020(1) and (2),  
25 36.70A.040, 36.70A.070, and 36.70A.140 by failing to take action to adopt any revisions  
26 to its comprehensive plan resulting from its review of its urban growth areas and the  
27 densities permitted within both the incorporated and unincorporated portions of each  
28 UGA within the timeframe established in the statute?
- 29 3. Did the County violate RCW 36.70A.130, 36.70A.110, 36.70A.020(1) and (2), 36.70A.040,  
30 36.70A.070, 36.70A.140, the Urban Fringe Subarea Plan, the Countywide Planning  
31 Policies (CPPs), the County's Comprehensive Plan and the Interlocal Agreement by  
32 failing to complete review of the Bellingham UGA within the timeframe established in the  
Urban Fringe Subarea Plan?

- 1 4. Does the failure to conduct the reviews and adopt any required revisions within the  
2 required timeframes as described in paragraphs 1-3 above, substantially interfere with  
3 the goals and requirements of the GMA?

4  
5 **IV. Issues Presented in Dispositive Motions**

- 6 A. Does RCW 36.70A.130(3) require Whatcom County to review its urban growth  
7 areas designations no later than 2004?
- 8 B. Is Whatcom County required by the Urban Fringe Subarea Plan, the Countywide  
9 Planning Policies (CPPs), the County's Comprehensive Plan and an Interlocal  
10 Agreement to conduct the review mandated by RCW 36.70A.130(3) within five  
11 years of the adoption of the County comprehensive plan in 1997?

12  
13 **V. Burden of Proof**

14 For purposes of board review of the comprehensive plans and development regulations  
15 adopted by local government, the GMA establishes three major precepts: a presumption of  
16 validity; a "clearly erroneous" standard of review; and a requirement of deference to the  
17 decisions of local government.

18  
19 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and  
20 amendments to them are presumed valid upon adoption:

21  
22 Except as provided in subsection (5) of this section, comprehensive plans and  
23 development regulations, and amendments thereto, adopted under this chapter are  
24 presumed valid upon adoption.  
25 RCW 36.70A.320(1).

26 The statute further provides that the standard of review shall be whether the challenged  
27 enactments are clearly erroneous:

28  
29 The board shall find compliance unless it determines that the action by the state  
30 agency, county, or city is clearly erroneous in view of the entire record before the  
31 board and in light of the goals and requirements of this chapter.  
32 RCW 36.70A.320(3).

1 In order to find the County's action clearly erroneous, the Board must be "left with the firm  
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

4  
5 Within the framework of state goals and requirements, the boards must grant deference to  
6 local government in how they plan for growth:  
7

8 In recognition of the broad range of discretion that may be exercised by counties and  
9 cities in how they plan for growth, consistent with the requirements and goals of this  
10 chapter, the legislature intends for the boards to grant deference to the counties and  
11 cities in how they plan for growth, consistent with the requirements and goals of this  
12 chapter. Local comprehensive plans and development regulations require counties  
13 and cities to balance priorities and options for action in full consideration of local  
14 circumstances. The legislature finds that while this chapter requires local planning to  
15 take place within a framework of state goals and requirements, the ultimate burden  
16 and responsibility for planning, harmonizing the planning goals of this chapter, and  
17 implementing a county's or city's future rests with that community.

18 RCW 36.70A.3201 (in part).

19 In sum, the burden is on the Petitioner to overcome the presumption of validity and  
20 demonstrate that any action taken by the County is clearly erroneous in light of the goals  
21 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).  
22 Where not clearly erroneous and thus within the framework of state goals and requirements,  
23 the planning choices of local government must be granted deference.

## 24 VI. DISCUSSION OF ISSUES

### 25 A. Does RCW 36.70A.130(3) require Whatcom County to review its urban growth 26 areas designations no later than 2004? 27

#### 28 Positions of the Parties

29 Petitioner argues that RCW 36.70A.130(3) requires the County to complete the review and  
30 update of its urban growth areas (UGAs) within 10 years of the original deadline by which  
31 the Growth Management Act (GMA) required the County to establish its UGAs. Petitioner's  
32

1 Motion for Summary Judgment and Supporting Memorandum at 7. In support of this  
2 position, Petitioner refers the Board to the 2005 decision of the Central Puget Sound Growth  
3 Management Hearings Board (Central Board). Ibid at 7-8, citing *1000 Friends of*  
4 *Washington, et al. and Jerry Harless, pro se v. Kitsap County ("Harless")*, CPSGMHB Case  
5 No. 04-3-00031c (Final Decision and Order, June 28, 2005). Since Whatcom County was  
6 required to adopt its comprehensive plan, including its urban growth area designations, by  
7 June 1, 1994, Petitioner argues, the required review must have been completed no later  
8 than 2004. Petitioner's Motion for Summary Judgment and Supporting Memorandum at 7.  
9

10  
11 Whatcom County, on the other hand, argues that RCW 36.70A.130(3) does not require a  
12 review and update of the County's UGAs until 10 years after adoption of the County's  
13 comprehensive plan. Respondent's Memorandum in Support of Dispositive Motion at 2. In  
14 support of its position, the County cites to the advice given in the Washington State  
15 Department of Community, Trade and Economic Development (CTED) Technical Bulletin  
16 1.3. Ibid. Since the County's comprehensive plan was adopted in 1997, the County argues,  
17 the review of its UGAs is not due until 2007.  
18

## 19 20 **Board Discussion**

21 The obligation to review urban growth areas is found at RCW 36.70A.130(3):  
22

23 Each county that designates urban growth areas under RCW 36.70A.110 shall  
24 review, at least every ten years, its designated urban growth area or areas, and the  
25 densities permitted within both the incorporated and unincorporated portions of each  
26 urban growth area. In conjunction with this review by the county, each city located  
27 within an urban growth area shall review the densities permitted within its boundaries,  
28 and the extent to which the urban growth occurring within the county has located  
29 within each city and the unincorporated portions of the urban growth areas. The  
30 county comprehensive plan designating urban growth areas, and the densities  
31 permitted in the urban growth areas by the comprehensive plans of the county and  
32 each city located within the urban growth areas, shall be revised to accommodate the  
urban growth projected to occur in the county for the succeeding twenty-year period.  
The review required by this subsection may be combined with the review and  
evaluation required by RCW 36.70A.215.

RCW 36.70A.130(3)

1 This obligation is distinct from the obligation to review and revise the County's  
2 comprehensive plan and development regulations established in RCW 36.70A.130(1) – the  
3 “Update” requirement of the GMA. The Update of the comprehensive plan and  
4 development regulations must include consideration of critical areas ordinances and “an  
5 analysis of the population allocated to a city or county from the most recent ten-year  
6 population forecast by the office of financial management”. The deadline for the Update  
7 follows a schedule set for each county and the cities within them in RCW 36.70A.130(4).  
8 Whatcom County completed its Update in a timely manner.  
9

10  
11 The question presented here is whether the County has failed to timely complete its review  
12 of its UGAs. No schedule of dates for UGA reviews is established in the GMA. Petitioner  
13 argues that the ten year UGA review period was intended to run from the date set for  
14 adoption of UGA designations in RCW 36.70A.040(3) so that the UGA reviews would be  
15 synchronized with the Washington State Office of Financial Management (OFM) population  
16 forecasts. Petitioner's Response to Respondent Whatcom County's Dispositive Motion and  
17 Supporting Memorandum at 2-3. The County, on the other hand, argues that the ten year  
18 review period runs from the date of actual adoption of the UGA designations. Respondent's  
19 Memorandum in Support of Dispositive Motions at 1-2.  
20  
21

22  
23 As our sister board has stated, since its adoption, the GMA has been amended to alter and  
24 extend the deadlines for completing the Update requirement. *1000 Friends of Washington,*  
25 *et al. and Jerry Harless, pro se v. Kitsap County (“Harless”),* CPSGMHB Case No. 04-3-  
26 00031c (Final Decision and Order, June 28, 2005). As recently as the 2006 Regular  
27 Session of the Legislature, the deadlines established in RCW 36.70A.130(4) were altered  
28 yet again. ESSB 6427. At the same time, the ten-year UGA review requirement has not  
29 been amended. From this fact, the Central Board determines that the RCW 36.70A.130(3)  
30 UGA review requirement runs from the date that jurisdictions were originally expected to  
31 adopt their comprehensive plans. *Harless* at 35-6. The Central Board finds that allowing  
32 “tardy” jurisdictions to “reset the clock” undermines planning coordination between cities and

1 counties. In addition, the Central Board finds that a consistent ten-year review schedule  
2 comports with the timing of the OFM population projections and the buildable lands review  
3 and evaluation program. Ibid at 35.

4  
5 The County argues that the statute is clear on its face and does not require the  
6 interpretation in which the Central Board engaged. “The statute provides no deadline, no  
7 starting date, nor is there any cross-reference to any other date in the statute that provides  
8 a deadline or starting date.” Respondent’s Response to Motion for Summary Judgment at 5.  
9 The County goes on to say: “The GMA provisions are to be strictly construed, and the  
10 Board should not expand the language of the statute by reading in a deadline that does not  
11 exist.” Ibid.

12  
13  
14 We agree that RCW 36.70A.130(3) sets no dates for action. Unlike other sections of the  
15 GMA, RCW 36.70A.130(3) sets a period of time during which an action must take place but  
16 does not set a specific date for compliance. In contrast, see RCW 36.70A.040, 36.70A.060,  
17 36.70A.110, 36.70A.130(4) and (6), 36.70A.170, 36.70A.200, 36.70A.210, 36.70A.215 and  
18 36.70A.367. Instead, RCW 36.70A.130(3) provides that: “Each county that designates  
19 urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its  
20 designated urban growth area or areas...” The question posed is from what action, or  
21 inaction, the ten year period begins to run.

22  
23  
24 In analyzing a statutory provision, the first principle is to give effect to the intent of the  
25 legislature. *Sheehan v. Transit Authority*, 155 Wn.2d 740, 747, 2005 Wash. LEXIS 917  
26 (2005). Where the language of the statute is clear, there is no basis for statutory  
27 construction. *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994).

28  
29  
30 Here, the statutory language provides that the UGA designations and densities must be  
31 reviewed at least every ten years. The operative words in the language are “designates”  
32 and “designated”. A county that *designates* UGAs must review those *designated* urban

1 growth areas. Therefore, it is the designation that is reviewed every ten years and the time  
2 for review must run from the time of designation.

3  
4 We find that the absence of a specified date for UGA review is indicative of legislative intent  
5 to allow enough time to assess how well the original designations have served their  
6 purpose. Had the Legislature meant to set a firm date rather than a period of time for UGA  
7 review, then it would have established a schedule in RCW 36.70A.130(3) as it did in RCW  
8 36.70A.130(4).  
9

10  
11 We further note that this reading of the statute makes sense within the statutory scheme as  
12 a whole. See *State v. McGary*, 122 Wn.App. 308, 314, 93 P.3d 941, 2004 Wash. App.  
13 LEXIS 1341 (2004). The purpose of the UGA review is to determine whether the urban  
14 growth areas and the densities within them are appropriately accommodating urban growth.  
15 The statute clearly contemplates that the jurisdiction will have a period of up to ten years to  
16 measure and evaluate the relative success of the UGA boundaries and densities it has  
17 chosen. To conduct that review without a sufficient period of time for evaluation would not  
18 allow a meaningful review. Under the analysis proposed by Petitioner, a jurisdiction that,  
19 for example, adopted its comprehensive plan in 2002, would have to conduct a review of its  
20 urban growth areas immediately thereafter. Such a review would not have a meaningful  
21 function since there would be no basis for reviewing the relative success of the original  
22 urban growth boundaries and densities.  
23  
24

25  
26 We also note that coordination with the OFM population projections is expressly addressed  
27 in RCW 36.70A.130(1). It requires "an analysis of the population allocated to a city or  
28 county from the most recent ten-year population forecast by the office of financial  
29 management" for the Update. This analysis in the Update forms the basis for the 10-year  
30 UGA review and is tied to a specific date. See RCW 36.70A.130(4).  
31  
32

1 Although we cannot say that the County could not have conducted a meaningful review of  
2 its UGA boundaries and densities in 2004, the statute allows the County a ten year period to  
3 review its UGAs. In fact, it expressly contemplates that the UGA review might be combined  
4 with the Update, but does not require it: "The review and evaluation required by this  
5 subsection may be combined with the review required by subsection (3) of this section."  
6 RCW 36.70A.130(1). The County acted within its discretion in choosing to utilize the longer  
7 period (although it may be no more than ten years) to complete its UGA review.  
8  
9

10 **Conclusion:** RCW 36.70A.130(3) allows the County up to ten years from the date of  
11 designation of its UGAs to complete its review of UGA boundaries and densities. The  
12 County has not failed to comply with RCW 36.70A.130(3) since the ten year period for UGA  
13 review of the designations adopted in the 1997 comprehensive plan has not yet elapsed.  
14  
15

16 **B. Is Whatcom County required by the Urban Fringe Subarea Plan, the**  
17 **Countywide Planning Policies (CPPs), the County's Comprehensive Plan and**  
18 **an Interlocal Agreement to conduct the review mandated by RCW 36.70A.130(3)**  
19 **within five years of the adoption of the County comprehensive plan in 1997?**

## 20 **Positions of the Parties**

21 Petitioner argues that the County committed to a "more expeditious review of the  
22 [Bellingham] City's UGA than is required by the GMA but has failed to abide by that review  
23 schedule". Petitioner's Motion for Summary Judgment at 11. Petitioner offers the Urban  
24 Fringe Subarea Plan, incorporated into the comprehensive plan and countywide planning  
25 policies, as evidence of the more expedited schedule. Ibid. This subarea plan review  
26 schedule, Petitioner asserts, is also reflected in an Interlocal Agreement between the City of  
27 Bellingham and Whatcom County to manage growth in the UGAs. Ibid at 12.  
28  
29

30 Whatcom County argues that the Board does not have jurisdiction to "address violations of  
31 the County's comprehensive plan, its subarea plan, its countywide planning policies or an  
32 interlocal agreement unless those violations are also violations of the GMA". Respondent's

1 Memorandum in Support of Dispositive Motions at 3. Because the alleged violations do not  
2 involve an allegation that the County has failed to comply with the requirements of the GMA,  
3 the County argues this Board lacks jurisdiction to hear the challenge. Ibid.

#### 5 **Board Discussion**

6 The jurisdiction of the growth management hearings boards is primarily set forth in following  
7 section of the GMA:  
8

9 A growth management hearings board shall hear and determine only those petitions  
10 alleging either:

- 11 (a) That a state agency, county, or city planning under this chapter is not in  
12 compliance with the requirements of this chapter, chapter 90.58 RCW as it  
13 relates to the adoption of shoreline master programs or amendments thereto,  
14 or chapter 43.21C RCW as it relates to plans, development regulations, or  
15 amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or  
16 (b) That the twenty-year growth management planning population projections  
17 adopted by the office of financial management pursuant to RCW 43.62.035  
should be adjusted.

18 RCW 36.70A.280(1)

19 The County argues that the Board does not have jurisdiction over violations of the Subarea  
20 Plan, the Comprehensive Plan, the Countywide Planning Policies and the Interlocal  
21 Agreement between Bellingham and Whatcom County when those planning documents set  
22 requirements that exceed the requirements of the GMA. Respondent's Motion in Support of  
23 Dispositive Motion at 3.

24  
25 However, Petitioner argues that the Board has jurisdiction to review the Subarea Plan and  
26 other policies since the County has "chosen to discharge its GMA planning responsibilities"  
27 through its Subarea Plan. Petitioner's Motion for Summary Judgment at 14. Petitioner  
28 cites that portion of the Central Board's decision in *COPAC-Preston Mill v. King County*,  
29 CPSGMHB Case No. 96-3-0013c (Final Decision and Order, August 21, 1996) that states:  
30 "when a local government includes a self-imposed duty in its plan, such as a deadline, the  
31 consistency requirements of RCW 36.70A.070 and .120 oblige it to meet this duty."  
32

Petitioner argues that the adoption of such earlier deadlines reflect a determination by the

1 County that “local circumstances require more prompt action than is otherwise required to  
2 satisfy the goals and requirements of the Act...” Petitioner’s Response to Respondent  
3 Whatcom County’s Dispositive Motion and Supporting Memorandum at 10. Essentially,  
4 then, Petitioner is arguing that the County’s Comprehensive Plan, Countywide Planning  
5 Policies, the Subarea Plan and the Interlocal Agreement with the City of Bellingham form  
6 part of its GMA requirements.  
7

8  
9 The County argues that the Interlocal Agreement between the County and the City of  
10 Bellingham is not enforceable by Mr. Wiesen. Response to Motion for Summary Judgment  
11 at 11. We agree that an interlocal agreement does not ordinarily create rights that members  
12 of the public can enforce, which is one reason why it is usually non-compliant with the GMA  
13 to enter into an interlocal agreement in lieu of adopting development regulations. See  
14 *Sedro-Woolley et al. v. Skagit County*, WWGMHB Case No. 03-2-0013c (Compliance  
15 Hearing Order, June 18, 2004), but see *Servais et al. v. City of Bellingham, et al.*,  
16 WWGMHB Case No. 00-2-0020 (Final Decision and Order, October 26, 2000) for an  
17 exception. Further, we note that the Interlocal Agreement expressly states that it should not  
18 be read to alter any requirements of State law:  
19

20           This agreement in no way modifies or supersedes existing State law and statutes.  
21           Interlocal Agreement at 10 (Section 13, Relationship to Existing Laws and Studies)  
22

23 On the other hand, the Urban Fringe Subarea Plan was incorporated into the County’s  
24 Comprehensive Plan (CP 2-22 -2-23) as provided in the Countywide Planning Policies (CPP  
25 F-11). Thus, to the extent that the Subarea Plan sets new deadlines for action, those  
26 deadlines are part of the Comprehensive Plan. Any review of the County’s UGAs would  
27 have to be consistent with the Comprehensive Plan, both to maintain the Comprehensive  
28 Plan as an internally consistent document (RCW 36.70A.070) and to assure that all  
29 planning activities are done in conformity with the Comprehensive Plan (RCW 36.70A.120).  
30  
31

32 In this case, the County has not yet taken an inconsistent action but, if the deadline for its  
self-imposed review period has passed, its failure to act within the specified time period

1 means that any future UGA review would be inconsistent with its comprehensive plan.<sup>1</sup> We  
2 therefore find that the Board has jurisdiction to determine whether the County has failed to  
3 comply with the GMA by failing to comply with the deadlines established in its  
4 comprehensive plan (through the Urban Fringe Subarea Plan).  
5

6 While moving to dismiss this issue on jurisdictional grounds, the County also asserts that it  
7 has been working with the City of Bellingham since early 2003 on the UGA review “and that  
8 process is close to being completed.” Ibid at 11. Further, the County notes that the  
9 agreement to undertake a five-year review only provides that the City and County “should”  
10 undertake a five-year review. Ibid. The County offers Resolution No. 2003-015 to show that  
11 the County has initiated formal review of several items including the Bellingham UGA.  
12 Docket #2003-A, Exhibit A to Resolution No. 2003-015.  
13  
14

15 In examining the Comprehensive Plan, Subarea Plan and Countywide Planning Policies, we  
16 do not find any language indicating a mandatory new date for accomplishment of the UGA  
17 review required by RCW 36.70A.130(3). Petitioner claims that a five-year review period was  
18 established, requiring the County to conduct a UGA review in 2002. However, none of the  
19 documents offered by Petitioner confirm his point. Exhibit 3 (identified only as a County  
20 planning document) references the Five Year Period Review. It states:  
21  
22

23 In order to assure sufficient flexibility in Bellingham’s Northern Urban Growth Area,  
24 and to respond to land supply and demand changes, the City and Whatcom County  
25 should review certain areas identified in this plan on a priority basis...

26 Four areas have been identified for consideration during Bellingham’s Five-Year  
27 Periodic Review...

28 Exhibit 3 at 108 (VIII. FIVE YEAR PERIODIC REVIEW)

29 The second page of Exhibit 3 again discusses the five year review:

30 <sup>1</sup> When a local jurisdiction fails to take action as directed by the GMA, a petitioner may challenge the failure to  
31 act. *Skagit Surveyors v. Friends of Skagit County*, 135 Wn. 2d 542, 558-9, 958 P.2d 962, 1998 Wash. LEXIS  
32 473 (1998) (“The language of this statutory section [RCW 36.70A.280(1)] authorizes a hearings board to  
determine whether actions or failures to act on the part of a county comply with the requirements of the Growth  
Management Act.”)

1 The plan envisions two general types of plan amendments. The first type is a review  
2 conducted every five years. This Periodic Review should re-examine the land use  
3 plan, including a re-evaluation of goals, updates of land-related elements, the  
4 reaffirmation of land use policies, proposals, and neighborhood planning areas within  
5 Bellingham's Urban Growth Area; land supply and demand analysis and  
6 consideration of urban development needs. It is the responsibility of both the  
7 Bellingham and Whatcom County Planning Commissions and Planning staff as well  
8 as the people of the subarea to initiate and participate in such a review.

9 Exhibit 3 at 109 (IX. COMPREHENSIVE PLAN AMENDMENTS)

10 As the County argues, Section VIII of Exhibit 3 states only that the City and the County  
11 "should" review certain areas on a priority basis. Section IX of Exhibit 3 describes a periodic  
12 review that "should" examine the land use plan. Given the purpose of the periodic review  
13 and the fact that it is to be initiated by planning commissions, planning staff and "the people  
14 of the subarea", the statement that a five year review "should" occur does not rise to the  
15 level of a new, mandatory deadline for action. Under these circumstances, the use of the  
16 word "should" is directory, rather than mandatory.

17  
18 Further, the County did initiate the periodic review in 2002. Docket #2003-A, Exhibit A to  
19 Resolution No. 2003-015. The language of the Subarea Plan and Comprehensive Plan  
20 does not expressly address whether the review should be initiated or completed in five  
21 years. Accordingly, we find that the County has not failed to comply with a self-imposed  
22 deadline for earlier UGA review.

23  
24  
25 **Conclusion:** We find that the Board has jurisdiction over Issue 3 but we determine that the  
26 Urban Fringe Subarea Plan and the County's comprehensive plan did not create a new,  
27 mandatory deadline for completion of UGA review. Therefore, the County has not failed to  
28 comply with deadlines established in its own planning policies for GMA action.

## 31 VII. Findings of Fact

- 32 1. Whatcom County is a county located west of the crest of the Cascade Mountains that  
is required to plan pursuant to RCW 36.70A.040.

2. Robert Wiesen is a landowner and resident of Whatcom County.
3. The petition for review was filed in this case on April 19, 2006 and challenges the County's failure to perform the review of urban growth areas (UGAs) required by RCW 36.70A.130(3).
4. Petitioner raised his claims that the County failed to timely perform the review of urban growth areas (UGAs) required by RCW 36.70A.130(3) to the County in written comments and public hearings.
5. Whatcom County adopted its Comprehensive Plan, including its final designation of UGAs, in 1997.
6. Whatcom County completed the Update of its Comprehensive Plan required by RCW 36.70A.130(1), (2) and (4) in 2005.
7. Whatcom County has not completed the review of its UGAs required by RCW 36.70A.130(3).
8. Whatcom County intends to complete the review of its UGAs by 2007.
9. The Interlocal Agreement between Whatcom County and the City of Bellingham Concerning Annexation and Development Within the City of Bellingham states:

This agreement in no way modifies or supersedes existing State law and statutes.
10. The Urban Fringe Subarea Plan was incorporated into the County's comprehensive plan (CP 2-22 -2-23) as provided in the Countywide Planning Policies (CPP F-11).
11. The County has not yet taken an inconsistent action but, if the deadline for its self-imposed review period has passed, its failure to act within its specified time period means that any future UGA review would be inconsistent with its comprehensive plan.
12. The Comprehensive Plan, Subarea Plan and Countywide Planning Policies do not contain any language indicating a mandatory new date for accomplishment of the UGA review required by RCW 36.70A.130(3).

- 1 13. The Subarea Plan states only that the City and the County “should” review certain  
2 areas on a priority basis and “should” examine the land use plan during a five year  
3 periodic review.  
4 14. The County initiated a periodic review of the Bellingham UGA in 2003. Docket  
5 #2003-A, Exhibit A to Resolution No. 2003-015.  
6 15. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby  
7 adopted as such.  
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10 **VIII. Conclusions of Law**

- 11 A. The Board has jurisdiction over the parties to this petition for review.  
12 B. Petitioner has standing to bring the claims raised in his petition for review.  
13 C. The Board has jurisdiction over Issues 1 and 2, alleging a failure to act as required by  
14 RCW 36.70A.130(3).  
15 D. The time for Whatcom County’s completion of the UGA review required by RCW  
16 36.70A.130(3) has not yet elapsed.  
17 E. The Board has jurisdiction over Issue 3 to determine whether the County has failed to  
18 comply with the GMA by failing to comply with any deadlines established in its  
19 Comprehensive Plan, Countywide Planning Policies and Urban Fringe Subarea Plan.  
20 F. The Interlocal Agreement between Whatcom County and the City of Bellingham  
21 Concerning Annexation and Development Within the City of Bellingham did not alter  
22 the deadline for UGA review found in RCW 36.70A.130(3).  
23 G. The County Comprehensive Plan, Countywide Planning Policies and Urban Fringe  
24 Subarea Plan did not create a new, mandatory deadline for completion of the  
25 Bellingham UGA review. Therefore, the County has not failed to comply with  
26 deadlines established in its own planning policies for GMA action.  
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1 IX. ORDER

2 Based on the foregoing, the Board finds that the petition for review filed herein is premature  
3 and **DISMISSES** this case.  
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5 DATED this 18<sup>th</sup> day of July 2006.  
6

7 \_\_\_\_\_  
Margery Hite, Board Member

8 \_\_\_\_\_  
9 Holly Gadbow, Board Member

10 \_\_\_\_\_  
11 Gayle Rothrock, Board Member  
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13  
14 Pursuant to RCW 36.70A.300 this is a final order of the Board.  
15

16 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date  
17 of mailing of this Order to file a petition for reconsideration. The original and three  
18 copies of a motion for reconsideration, together with any argument in support  
19 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the  
20 original and three copies of the motion for reconsideration directly to the Board, with  
21 a copy to all other parties of record. Filing means actual receipt of the document at  
22 the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing  
of a motion for reconsideration is not a prerequisite for filing a petition for judicial  
review.

23 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
24 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
25 judicial review may be instituted by filing a petition in superior court according to the  
26 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
27 Enforcement. The petition for judicial review of this Order shall be filed with the  
28 appropriate court and served on the Board, the Office of the Attorney General, and all  
29 parties within thirty days after service of the final order, as provided in RCW  
30 34.05.542. Service on the Board may be accomplished in person or by mail, but  
31 service on the Board means actual receipt of the document at the Board office within  
32 thirty days after service of the final order. A petition for judicial review may not be  
served on the Board by fax or by electronic mail.

**Service.** This Order was served on you the day it was deposited in the United States  
mail. RCW 34.05.010(19).

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